

**AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
GEA POWER COOLING, INC.**

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2008, ("Effective Date") by and between GEA Power Cooling, Inc., a California corporation with its primary business address at 17755 US Highway 19 N, Suite 250, Clearwater, FL 33764 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SCOPE OF SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written *Notice to Proceed* from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written *Notice of Final Acceptance*. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

4. COMPENSATION AND PAYMENT TO CONTRACTOR.

- A. In consideration for Contractor's complete performance of the Services, City shall pay Contractor for all Services rendered by Contractor in accordance with the rate per hour for labor and cost per unit for materials as outlined in Exhibit B entitled "Fee Schedule." The payments made by City under this Agreement will be the amounts charged for Services provided and billed by Contractor, subject to verification by City, pursuant to the hourly rates set forth in the Fee Schedule supplied in writing by Contractor and maintained on file with City at the time the Services are provided.
- B. Contractor shall bill City on a monthly basis for the Services provided by Contractor during the preceding month, subject to verification by City. Payment to Contractor for Services will be made within thirty (30) days of City's receipt of invoice.

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5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate at the end of the day three (3) years from the effective date.

6. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST.

This Agreement is a contract for professional services. City and Contractor bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of City. However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

7. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

8. SUBCONTRACTING.

None of the Services provided under this Agreement shall be performed by subcontractors unless such subcontractors are specifically identified by Contractor and pre-approved by City in writing.

9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that in performing the work required under this Agreement, Contractor and any person employed by or contracted with Contractor to furnish labor and/or materials under this Agreement is not an agent nor employee of City. Contractor has full rights to manage its employees subject to the requirements of the law.

10. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

11. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

13. USE OF CITY NAME OR LOGO.

Contractor shall not use City's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

15. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents that its personnel are qualified to furnish services in the form of labor and materials of the type and quality which City requires and that Contractor agrees to perform all work in accordance with generally accepted business practices and performance standards of the industry. City expressly relies upon Contractor's representations regarding its skills and knowledge. City shall restrict its service requests to those projects which are within the skill and capability levels of Contractor and its employees.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

16. MONITORING AND EVALUATION OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify Contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

17. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

18. CORRECTION OF SERVICES.

- A. Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

B. Sellers warranty obligation is limited to the replacement of defective materials and workmanship. Third party claims or consequential damages are waived. GEA shall not be liable for damage to "collateral" equipment by defective materials or workmanship provided under this purchase order. All warranties are valid for one year from completion of the work.

C. THE WARRANTY OF MATERIALS AND WORKMANSHIP IS THE ONLY WARRANTY MADE BY GEA POWER COOLING INC. AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND GEA POWER COOLING INC. DISCLAIMS ON BEHALF OF ITSELF, ITS SUBCONTRACTORS AND SUBSUPPLIERS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE (OTHER THAN THE PURPOSE STATED IN THE PURCHASER'S SPECIFICATIONS SET FORTH IN THE CONTRACT), SUITABILITY OR PERFORMANCE.

19. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

20. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement. Those matters which are determined to be a result of the sole negligence or fault of the indemnified parties shall be excluded from the Contractor's obligations to indemnify. In the event such damage or injury is caused by the joint or concurrent negligence of the parties the loss shall be borne by each party in proportion to its negligence.

21. INSURANCE REQUIREMENTS.

A. During the term of this Agreement, and for any required time thereafter as set forth below, Contractor shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- 1) commercial general liability policy (bodily injury and property damage);
- 2) comprehensive automobile liability policy;
- 3) workers' compensation and employer's liability policy; and
- 4) professional liability policy.

- B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "INSURANCE REQUIREMENTS."
- C. Risk of Loss (transfer of care, custody and control) to transfer on demobilization of the GEA construction crew.

22. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Contractor, shall be incorporated in amendments to this Agreement.

23. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT.

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

24. SEVERABILITY CLAUSE.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

25. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

26. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

The Office of the Director of Electric Department
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 261-2717

And to Contractor addressed as follows:

GEA Power Cooling, Inc.
17755 US Highway 19 N.
Suite 250
Clearwater, FL 33764
or by facsimile at (727) 530-9006

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

27. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

28. STATUTES AND LAW GOVERNING CONTRACT.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

29. COMPLIANCE WITH LAWS.

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

30. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.

- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

31. VENUE.

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

32. OTHER AGREEMENTS.

This Agreement shall not prevent either Party from entering into similar agreements with others.

33. CONFLICT OF INTEREST.

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

34. TERMINATION OF AGREEMENT.

a. Termination Without Cause

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

b. Termination For Cause

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default

by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, City shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. City may deduct from such payment the amount of actual damage, if any, sustained by City due to Contractor's failure to perform the Services or for breach of this Agreement.

c. Opportunity To Cure Default

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

35. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Contractor shall:

- a. Read the attached Exhibit D entitled "ETHICAL STANDARDS," and,
- b. Execute the affidavit attached as Exhibit E entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

36. LIMITATION OF LIABILITY

In no event under this agreement or otherwise, whether as a result of breach of contract, warranty, tort (including negligence of any degree) or otherwise, shall either party be liable to the other party for any consequential, special, incidental, punitive, exemplary or indirect damages, including, but not limited to, loss of use, loss of revenue, loss of profit, loss of contract, or loss of goodwill, arising or related to this contract, whether such damages are arising from contract or negligence.

The total cumulative liability of Contractor and any of Contractor's related companies to the City for all claims, losses, damages, and expenses resulting in any way from the performance of this Contract shall be limited of the value of the P.O., or Six Hundred Thousand Dollars (\$600,000.00).

The total cumulative liability of City to Contractor and any of Contractor's related companies for all claims, losses, damages and expenses shall not be greater than Six Hundred Thousand Dollars (\$600,000.00).

37. CONSEQUENTIAL DAMAGES

In no event shall GEA or its vendors subcontractors be liable for any consequential, incidental, indirect or punitive damages, including, but not limited to, loss of use of plant and equipment or loss of profit, for any reason whether arising in contract, tort, negligence, strict liability or otherwise. Nor shall GEA or its subcontractors be liable to indemnify owner and/or contractor for claims for such consequential, incidental, indirect or punitive damages.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to form:

HELENE L. LEICHTER
City Attorney

Attest:

JENNIFER SPARACINO
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408)615-2210
Fax: (408)241-6771

ROD DIRIDON, JR.
City Clerk

"City"

GEA POWER COOLING, INC.
a ~~California~~ Delaware corporation

By: Richard D. Hebert 8/28/08 *[Signature]*
RICHARD HEBERT
Title: Vice President & General Manager
Address: 143 Union Blvd., Suite 400
Lakewood, CO 80228
Telephone: (303)987-0123
:
Facsimile: (303)987-0101

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
GEA POWER COOLING, INC.

EXHIBIT A
SCOPE OF SERVICES

The following Scope of Goods/Services are to be provided to City by Contractor under this Agreement:

The Contractor's proposal entitled Cooling Tower Drift Eliminator Replacement dated July 29, 2008 ("Proposal") is attached to this Exhibit A and is incorporated by this reference. The Scope of Services to be provided to the City by the Contractor, and the time frame during which the Services are to be provided under this Agreement are fully set forth in the Proposal.



Donald Haines
Silicon Valley Power
Donald Von Raesfeld Power Plant
1115 Space Park Drive
Santa Clara, CA 95054

Phone: 408-615-6554
Fax: 408-988-8021
Email Addr: dhaines@svpower.com

Thermal Engineering

Mary McLaughlin
Aftermarket

Telephone (727) 530-9244
Fax (727) 530-9006
Mary.mclaughlin@geagroup.com
07/29/2008

Reference: GEA Proposal #JG-R-8017.2
Cooling Tower Drift Eliminator Replacement

Dear Mr. Haines:

GEA Power Cooling, Inc. is pleased to present the following proposal for repairs to your GEA model 424837-3I-30-FCF 3-cell counterflow cooling tower. Please refer to the Table of Contents on page 3 of this proposal for details.

Proposal is based on the attached clarifications/exceptions to Agreement for Services.

We trust this information is sufficient for your evaluation of our proposal. However, if you need additional information or to discuss this proposal further, please do not hesitate to contact our local Sales Engineer, Jesse Garcia at 559-595-7922 (jgarcia@geapowercooling.com) or our West Coast Regional Manager, Steve Beckman at 209-357-5511 (sbeckman@geapowercooling.com).

Thank you for this opportunity. We look forward to working with you on this project.

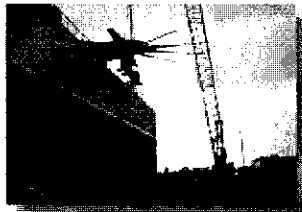
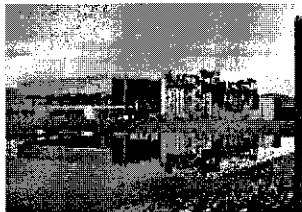
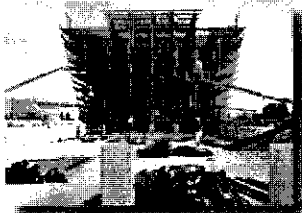
Sincerely,

Mary McLaughlin

Mary McLaughlin
Proposals Manager

GEA POWER COOLING, INC.

17755 US Hwy 19 N, SUITE 250, CLEARWATER, FL 33764
TELEPHONE (727) 530-9000, WWW.GEAPOWERCOOLING.COM



Proposal Prepared for:

SILICON VALLEY POWER

Donald Von Raesfeld Power Plant

1115 Space Park Drive

Santa Clara, CA 95054

Attention:

Donald Haines

Project:

GEA Proposal #JG-R-8017.2

Cooling Tower Drift Eliminator Replacement

Date:

07/29/2008

Submitted by:

GEA POWER COOLING, INC.

17755 US Highway 19N, Suite 250

Clearwater, FL 33764-6588

Phone 727-530-9000 • Fax 727-530-9006

email aftermarket@geapowercooling.com

Point of Contact:

Jesse Garcia, Sales Engineer

Phone: 559-595-7922

Fax: 559-595-1249

E-Mail: jgarcia@geapowercooling.com



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The information contained in this document is confidential and proprietary to GEA Power Cooling, Inc. This information is submitted with the express understanding that it will be held in strict confidence and will not be disclosed, reproduced, stored in a retrieval system or used, in whole or in part, for any purpose other than evaluation of the proposal, and will not be released, in whole or in part, to any third party without the prior written consent of GEA Power Cooling, Inc.

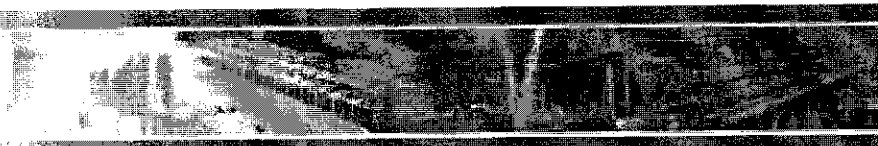


TABLE OF CONTENTS

About GEA Power Cooling, Inc.....	4
Scope of Work & Pricing Section.....	5
Base Bid	5
Alternate Bid #1: Gearbox.....	5
Material Specifications	5
Project Execution Section.....	6
Project Schedule.....	6
Scope of Supply.....	7
Assumed Site Conditions.....	8
Commercial Exceptions / Clarifications	9
Pricing Notes / Clarifications.....	10
Product Brochures.....	11



ABOUT GEA POWER COOLING, INC.

GEA Power Cooling, Inc. incorporates leading technology and lifetime customer support in its wet and dry cooling solutions, providing superior performance and years of cost effective service with minimal maintenance requirements.

Extensive aftermarket replacement parts, repairs and services are provided for any existing system, no matter what brand. GEA aftermarket products and services optimize production, ensure continuous operation and extend service life at minimal cost.

Wet Cooling Solutions

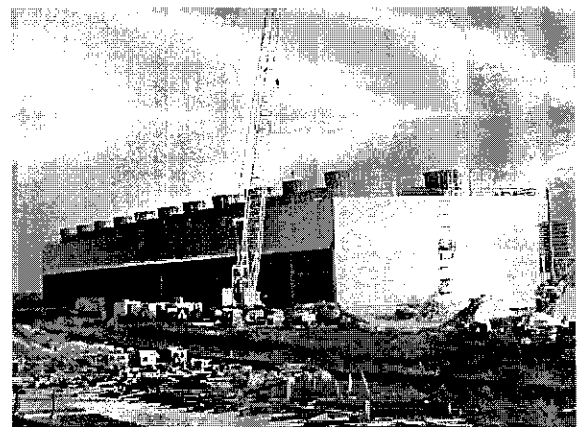
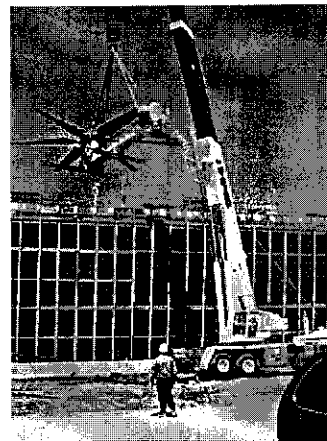
- Counterflow Cooling Towers
- Crossflow Cooling Towers
- Plume Abated Cooling Towers

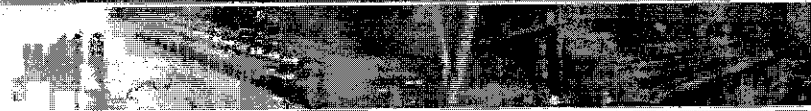
Dry Cooling Solutions

- Air-Cooled Condenser (ACC)
- Parallel Condensing Systems

Aftermarket Services

- Repairs, Service and Spare Parts for All Brands of Existing Cooling Towers and Air-Cooled Condensers
- Inspection Service
- Onsite Operator Training
- Start-Up and Commissioning Assistance
- Preventive Maintenance
- Replacement Towers
- Extension Cells and Upgrades





SCOPE OF WORK & PRICING SECTION

Base Bid

Item #1: Drift Eliminators

Remove and replace drive eliminators in (3) cells. Includes the following construction:

- A. Remove existing CDX-150MAX drift eliminators
- B. Supply and install new CDX-080 drift eliminators
- C. 12oz. 6x6 corner roll fire retardant FRP perimeter sealers.
- D. Supply and install new PVC DE sealers around all posts and braces that protrude through the drift eliminators.
- E. 316 SS hardware

Item #2: Gearbox

Remove (1) gearbox and replace with customer supplied gearbox on (1) cell. Includes the following:

- A. Customer to supply all necessary holddown hardware.
- B. Re-use the existing motor, fan, drive shafts and oil lines.

NOTE: No materials, labor only for this scope of work.

Total Firm Price – Materials, Labor, Supervision, Taxes and Freight \$ 84,641

Alternate Bid #1: Gearbox

During separate mobilization from the base bid, remove and replace with customer supplied gearbox in (1) cell. Includes the following construction:

- A. Customer to supply all necessary hold down hardware.
- B. Re-use the existing motor, fan, drive shafts and oil lines.

NOTE: No materials, labor only.

Price Adder to the Base Bid \$ 12,954

Material Specifications

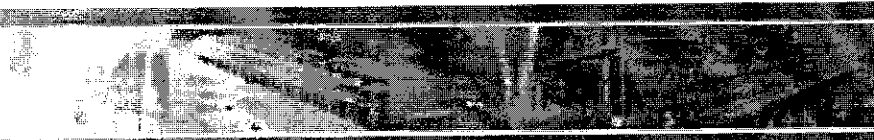
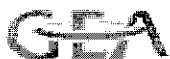
- Hardware 300 Stainless Steel
- Drift Eliminators UV Protected PVC per CTI STD-136

PROJECT EXECUTION SECTION

Project Schedule

- After receipt of purchase order, lead time for shipment to job site 4 Weeks
- Work hours per day for base bid 10
- Work days per week for base bid 5
- Average crew size (Base Bid) 6
- Work days required for completion of base bid project 6
 - Work days required for alternate bid 2

(Note: this excludes weather delays and other delays outside of GEA control)
- Cells shut down concurrently All cells at one time



Scope of Supply

- Materials by GEA
- Freight by GEA
- Erection Labor (Union) by GEA
- Supervision by GEA
- Dedicated On-Site Safety Manager by Not Included
 - On-Site Safety will be the responsibility of the Superintendent
- Receive Materials by GEA
- Stage Materials by GEA
- Truck and Tool Trailer by GEA
- Hoisting/Cranes by GEA
 - Fork Lift will be required for Base Bid.
 - Crane will be required for Add Option #1.
- Equipment Operators by GEA
- Waste Containers by GEA
- Disposal by GEA
- Oil Disposal by Silicon Valley
- Construction Power by Silicon Valley
 - 3 to 4 outlets, GFI 30 amps each – 110 V at cold water basin level and within 10' of the cooling tower.
- Sanitary Facilities by GEA
- Electrical Connect / Disconnect of Motors by Silicon Valley
- Respirators by Not Included
 - If crews are required to wear respirators while performing the work, additional charges will apply.
- Hole watch (if required by Silicon Valley) by Silicon Valley



Assumed Site Conditions

Lay-down area for the materials and tools is adjacent to the cooling tower approximately 100' x 100' in size. Three (3) sides of the cooling tower are open for equipment, no equipment mats are necessary.

During crew entry in the cooling tower, no chemicals will be fed into the tower. MSDS sheets for all the residual treatment chemicals will be required before crews enter the cooling tower.

GEA is assuming there will be no other concurrent work, outside of the scope of work in this proposal, being performed on or around the cooling tower during this time. Any delays caused by Owner or their subcontractors, including but not limited to forced plant evacuation, requests by Owner to stand-down, access and road limitations or closures will result in cost and schedule changes.

GEA will be responsible for maintaining a clean and safe workplace at all times. Upon completion of work GEA will remove all equipment, temporary structures and surplus construction materials. GEA will return to the Owner any materials supplied by the Owner or paid for by the Owner for incorporation into the Work, but not used. GEA will leave the premises in a neat and clean condition; any landscaping will be the responsibility of the Owner.

COMMERCIAL EXCEPTIONS / CLARIFICATIONS

Agreement for Services Rev 12/06/07, Typed: 5/30/08	
18. Correction of Services	<p>Add the following as a new item #B: "Sellers warranty obligation is limited to the replacement of defective materials and workmanship. Third party claims or consequential damages are waived. GEA shall not be liable for damage to "collateral" equipment by defective materials or workmanship provided under this purchase order. All warranties are valid for one year from completion of the work."</p> <p>Add the following as a new item #C: "THE WARRANTY OF MATERIALS AND WORKMANSHIP IS THE ONLY WARRANTY MADE BY GEA POWER COOLING INC. AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND GEA POWER COOLING INC. DISCLAIMS ON BEHALF OF ITSELF, ITS SUBCONTRACTORS AND SUBSUPPLIERS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE (OTHER THAN THE PURPOSE STATED IN THE PURCHASER'S SPECIFICATIONS SET FORTH IN THE CONTRACT), SUITABILITY OR PERFORMANCE."</p>
New Section 36 Limitation of Liabilities	<p>Add the following as new section 36: "GEA Power Cooling Inc. and its Subcontractors' and Subsuppliers' aggregate responsibility and liability whether arising out of contract or tort or any other legal context or theory, including negligence and strict liability, under the contract, including, but not limited to, all claims for breach of any warranty or guarantee, failure of performance or delay in performance by GEA Power Cooling Inc. or performance or non-performance of the purchased equipment shall not exceed the contract price for the purchased equipment and or service."</p>
New Section 37 Consequential Damages	<p>Add the following as new section 37: "In no event shall GEA or its vendors/subcontractors be liable for any consequential, incidental, indirect or punitive damages, including, but not limited to, loss of use of plant and equipment or loss of profit, for any reason whether arising in contract, tort, negligence, strict liability or otherwise. Nor shall GEA or its subcontractors be liable to indemnify owner and/or contractor for claims for such consequential, incidental, indirect or punitive damages."</p>

PRICING NOTES / CLARIFICATIONS

1. Pricing is valid for 30 days from the date of the proposal.
2. Pricing includes full freight allowed to the jobsite.
3. All costs for Payment and Performance bonds (if required) are by Client Company.
4. Taxes are included.
5. Pricing is based on the specified scope of work. Deletion or addition of scopes of work may require a revision of pricing.
6. Pricing is based on non-union labor.
7. Pricing is based on working 10 hours per day, 5 days per week.
8. Pricing is based on the use of standard safety equipment (ppe and fall protection). We have included an allowance for two (2) hours of on-site training, and no off-site training. Any special safety training, orientations, drug testing, background (standard or homeland security checks), or equipment are not included.
9. Pricing is based on the cooling tower being designated as a non-permitted confined space; no confined space attendant is included. If required, we can supply additional pricing for same.
10. Pricing is based upon implementation of GEA's standard Lock Out/Tag Out policy. Hole watch attendant(s) will be required at additional cost to owner in lieu of this policy.
11. Terms of Payment are Net 30 Days.
12. Pricing is based on the work being completed in Summer 2008.
13. This proposal is based on the following concepts being incorporated into the Conditions of Sale for any contracts resulting from this proposal.
 - 13.1. A statement that seller shall not be held liable for any indirect, incidental, or consequential damages.
 - 13.2. A limitation of our liability for any cause not to exceed the value of the contract.
 - 13.3. An exclusion of expressed or implied warranties, other than those contained herein.
 - 13.4. Indemnification provided by Seller will be on a comparative fault basis.
 - 13.5. Risk of Loss (transfer of care, custody and control) to transfer on demobilization of the GEA construction crew.

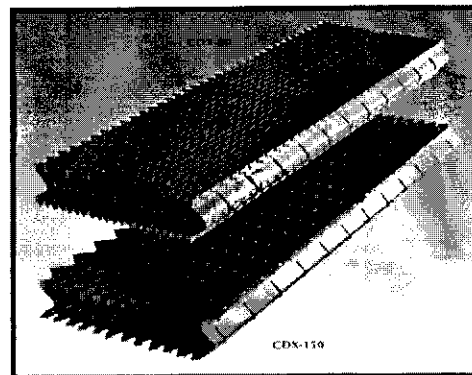


PRODUCT BROCHURES

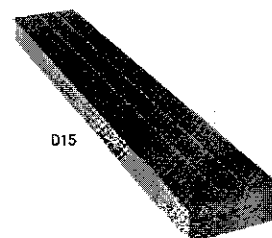
GEA Cellular and Blade Drift Eliminators

GEA's Cellular and Blade Drift Eliminators are manufactured by Brentwood Industries.

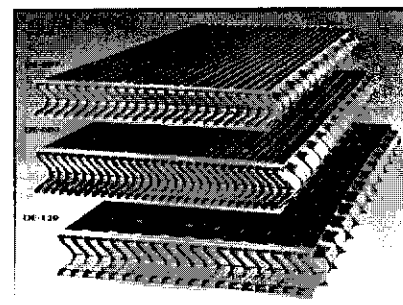
GEA's CDX-150 and CDX-80 cellular drift eliminators, manufactured by Brentwood, provide ultra-low drift loss. They are designed to nest or interlock with the module next to them. They utilize a series of sinusoidal-shaped corrugations bonded to mating sinusoidal structural waves to form closed cells that force the leaving air stream to make three distinct changes in direction, ensuring high drift removal efficiency.



GEA's D-15 cellular drift eliminator, manufactured by Brentwood, combines very high drift elimination with very low air pressure drop yielding an extremely efficient drift eliminator panel. They are made from wave formed, UV protected PVC sheets, flute formed for uniform thickness. They are available in 10 or 15 mil models.



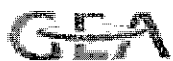
GEA's blade drift eliminators, are manufactured by Brentwood in various densities and configurations to meet specific tower applications. It utilizes a series of sinusoidal-shaped blades assembled into modules using an end cap design. This type design allows for very low pressure drop losses while still maintaining excellent drift removal capabilities.



GEA has thermal performance upgrade specialists on staff. Please allow us to perform thermal modeling of your cooling tower and let us offer solutions to all of your performance needs. In addition, GEA maintains a staff of construction specialists to implement the upgrade strategy. Please call for information.



Aftermarket Services Division



GEA Cellular and Blade Drift Eliminators

GEA's Cellular and Blade Drift Eliminators are manufactured by Brentwood Industries.

Product Summary

Product	Type	Std. Gauges Corr/Wave (Nom mils)	Module Depth	Module Width	Module Length
CDX-080	Cellular	10/15 15/15 10/30	5.5"	12 or 18"	2-10' in 2' Increments
CDX-150	Cellular	15/15 15/30	5.5"	12 or 18"	2-10' in 2' Increments
DE-080	Blade	25	5.75"	24"	1-12' in 2' Increments
DE-097	Blade	25	4.75"	23.25"	1.5-12' in 18" Increments
DE-120	Blade	25	5.75"	24"	1-12' in 2' Increments
D15-F3006	Cellular	10 & 15	5.25"	12 or 24"	6' or 8' Std. Cut to Length
D-15-F3008	Cellular	10 & 15	5.25"	12 or 24"	6' or 8' Std. Cut to length
D-15-F3010	Cellular	10 & 15	5.25"	12 or 24"	6' or 8' Std. Cut to Length

Aftermarket Services Division

GEA Power Cooling, Inc.

17755 US Hwy 19N, Suite 250

Clearwater, FL 33764

Phone: (727) 530-9000 Fax: (727) 530-9006

E-Mail: aftermarket@geapowercooling.com

Corporate Headquarters

GEA Power Cooling, Inc.

143 Union Boulevard, Suite 400

Lakewood, CO 80228-1824

Phone: (303) 987-0123 Fax: (303) 987-0101

www.geapowercooling.com



Aftermarket Services Division

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
GEA POWER COOLING, INC.

EXHIBIT B
FEE SCHEDULE

In no event shall the amount billed to City by Contractor for services under this Agreement exceed \$ 200,000.00, subject to budget appropriations.

See attached Proposal

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
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GEA POWER COOLING, INC.

EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- 1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- 2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
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EXHIBIT D
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty.³
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor can be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If the City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If the City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, contractor's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to the these provisions, Contractor may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR SERVICES
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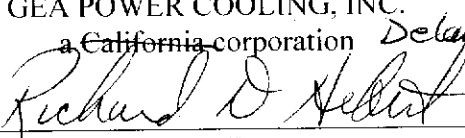
EXHIBIT E
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, Richard Hebert, being first duly sworn, depose and state I am Vice President & General Manager of GEA Power Cooling, Inc., and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.


Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

GEA POWER COOLING, INC.
a California corporation *Delaware*



RICHARD HEBERT
Vice President & General Manager

7/28/08 

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

AGREEMENT FOR SERVICES
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EXHIBIT F
MILESTONE SCHEDULE

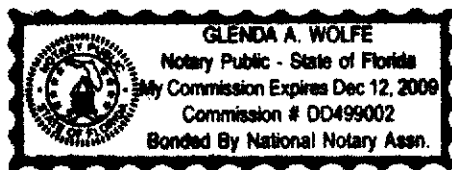
(NOT APPLICABLE)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of FLORIDA

County of PINELLAS

On 9/28/2008 before me, GLEND A. WOLFE
Date Here Insert Name and Title of the Officer
personally appeared RICHARD D. HEBERT AND CINDY WERGES
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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